

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,**

Plaintiff,

v.

**JACQUES SERVIN (aka ANDY BICHLBAUM
aka HINGO SEMBRA), IGOR VAMOS (aka
MIKE BONANNO), SUPPORT AND
COMMITMENT, INC., DAVID SIEVERS,
MORGAN GOODWIN, SARAH MURPHY,
and JOHN and JANE DOES NOS. 1-20,**

Defendants.

Case No.: 1:09-cv-02014 - (RWR)

**PLAINTIFF’S MOTION FOR LEAVE TO FILE
SUR-REPLY BRIEF IN OPPOSITION TO DEFENDANTS’ MOTION
FOR A STAY OF DISCOVERY AND RULE 26 DISCLOSURES**

Plaintiff, the Chamber of Commerce of the United States of America (the “Chamber”), by counsel and pursuant to Fed. R. Civ. P. 7(b), respectfully moves the Court for leave to file a Sur-reply Brief in Opposition to Defendants’ Motion for a Stay of Discovery and Rule 26 Disclosures. The Chamber’s proposed Sur-reply is attached to this Motion as Exhibit No. 1.

The grounds for the Chamber’s Motion are as follows:

1. On October 26, 2009, the Chamber filed a complaint against the Defendants for, among other things, trademark infringement and dilution, cyber-piracy, unfair competition, and false advertising. It filed a First Amended Complaint on November 6, 2009. The Chamber’s claims are based upon, among other misconduct, the Defendants’ registration and use of the domain name “chamber-of-commerce.us.” *E.g.*, First Am. Compl. ¶¶ 15-19. The Defendants

used this domain name for a Web site that held itself out to be that of the Chamber and which, in fact, appeared identical to the Chamber's Web site. *Id.* ¶ 20.

3. In its prayer for relief, the Chamber seeks an injunction requiring, *inter alia*, the Defendants to (a) dismantle any "fake" Chamber Web sites; and (b) transfer to the Chamber ownership and registration of the domain name "www.chamber-of-commerce.us."

4. On January 5, 2010, the Defendants filed a Motion to Dismiss Plaintiff's First Amended Complaint. In the Reply Brief that they submitted to the Court on February 19, 2010 in support of their Motion, the Defendants asserted:

The Chamber did not bring this lawsuit to secure any injunctive relief, since Defendants' parody was long over -- the press conference concluded months ago, the statements are no longer on the internet, **and the website no longer in Defendants' control**. . . . Rather, the Chamber brought and continues to pursue this action for one reason only -- to harass and punish Defendants
. . . .

Reply Brief in Support of Defendants' Motion to Dismiss at 23 (emphasis added).

5. As discussed more fully in the attached Sur-reply Brief, there is abundant evidence that this statement was false, particularly the Defendants' suggestion that they did not control the "chamber-of-commerce.us" site when the Chamber filed its lawsuit. Therefore, on March 3, 2010, counsel for the Chamber wrote to the Defendants' counsel and requested that the Defendants correct the statement or provide the factual basis for it, and that they provide information about their knowledge of the transfer of the Web site and its current owner.

6. On March 22, 2010, counsel for the Defendants refused to honor the Chamber's request. On the very same day, however, the Defendants submitted a "Notice of Errata to Reply Brief" and an amended page 23 of the Reply Brief in support of their pending Motion to Dismiss. The pertinent part of the Defendants' Reply Brief now reads, "The Chamber cannot reasonably seek injunctive relief, given that the parody is long over."

7. Given that the Defendants specifically represented to the Court, in their original Reply Brief, that they had given up control of the Web site, but refused the Chamber's request for proof and have subsequently withdrawn the statement to the Court, it is unclear whether the Defendants *really* have given up control of the www.chamber-of-commerce.us Web site.

8. The above circumstances create a need for prompt discovery in order to protect the Chamber's interests and, accordingly, weigh heavily against the Defendants' Motion for a Stay of Discovery and Rule 26 Disclosures.

WHEREFORE, the Chamber respectfully requests that the Court grant it leave to file the Sur-reply Brief in Opposition to Defendants' Motion for a Stay of Discovery and Rule 26 Disclosures that is attached as Exhibit No. 1 to this Motion.

Dated: March 26, 2010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail and U.S. Mail postage pre-paid this 26th day of March, 2010 upon:

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